

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

OSCAR A. STANLEY,

Petitioner,

vs.

BRIAN E. WILLIAMS, SR., et al.,

Respondents.

Case No. 2:16-cv-01036-APG-CWH

ORDER

Petitioner has paid the filing fee. The court has reviewed the petition pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts. The court will dismiss this action because it is a second or successive petition.

Petitioner is challenging his custody pursuant of a judgment of conviction of the Eighth Judicial District Court of the State of Nevada, Case No. 01C180446. Petitioner challenged his custody pursuant to the same judgment of conviction in this court in Stanley v. Whorton, Case No. 3:06-cv-00126-LRH-VPC. In that action, the court found that two grounds were procedurally defaulted and that the rest of the petition was without merit. Petitioner appealed, and the court of appeals denied a certificate of appealability. Petitioner petitioned the Supreme Court of the United States for a writ of certiorari. That petition was denied.

1 The petition in this action is a second or successive petition as defined in 28 U.S.C.
2 § 2244(b).¹ Petitioner must first obtain authorization from the court of appeals before this court can
3 consider his petition. 28 U.S.C. § 2244(b)(3). The petition contains no arguments why a second or
4 successive petition should be authorized, and the court will not refer it to the court of appeals. See
5 Circuit Rule 22-3. The court will dismiss this action, and petitioner will need to file an application
6 for authorization in the court of appeals.²

7 Reasonable jurists would not find the court's conclusion to be debatable or wrong, and the
8 court will not issue a certificate of appealability.


9 Petitioner has filed a motion for appointment of counsel (ECF No. 2). The court denies this
10 motion because the court is dismissing the action.

11 IT IS THEREFORE ORDERED that the motion for appointment of counsel (ECF No. 2) is
12 **DENIED**.

13 IT IS FURTHER ORDERED that this action is **DISMISSED** because it is a second or
14 successive petition for a writ of habeas corpus. The clerk of the court shall enter judgment
15 accordingly and close this action.

16 IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

17 DATED: October 6, 2016.

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ANDREW P. GORDON
United States District Judge

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¹To the extent that the prior action was dismissed in part because two grounds were procedurally defaulted, it does not change this court's conclusion that the current action is a second or successive petition. See Henderson v. Lampert, 396 F.3d 1049, 1052-53 (9th Cir. 2005).

²The petition also appears to be untimely under 28 U.S.C. § 2244(d)(1). The court will not address this issue further at this time.